

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and the following remarks are presented for the Examiner's consideration.

Claims 1-2 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1 and 5 of U.S. Patent No. 6,804,523 ("the '523 patent"). Applicant respectfully traverses the rejection for the following reason.

The instant application is a divisional application resulting from a restriction requirement made in Application No. 09/844,306 ("the '306 application") that issued as the '523 patent on October 12, 2004. Pursuant to 35 U.S.C. 121, the '523 patent cannot be used as a reference against the instant application.

Specifically, 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent (MPEP § 804.01). Therefore, since the instant application is a divisional application filed as a result of the restriction requirement made in the '306 application, the patent that issued from the '306 application cannot be used as a reference against the instant application.

For the above reasons, Applicant hereby requests that the rejection be withdrawn and the claims reconsidered.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the

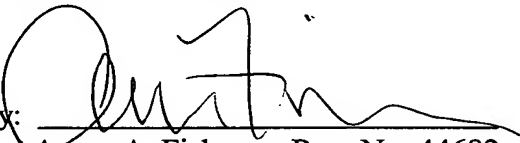
Appl. No.10/825,499  
Preliminary Amdt. Dated June 21, 2005  
Reply to Office action of March 21, 2005

application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33549US1.

Respectfully submitted,

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